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NOS. 80-965 and 80-1018

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

TEXACO, INC., ET. AL. ..... APPELLANTS

versus

LOUISE F. SHORT, ET. AL. ..... APPELLEES

EDEN H. POND, ET. AL. ..... APPELLANTS

versus

ULYSSES G. WALDEN, JR., ET. AL. ..... APPELLEES

On Appeal from the Supreme Court of Indiana

MOTION TO FILE AND BRIEF OF AMICUS CURIAE FOR SAVE OUR CUMBERLAND MOUNTAINS, INC., THE DAVID COMMUNITY DEVELOPMENT CORPORATION, INC., AND THE CONCERNED CITIZENS OF MARTIN COUNTY, INC.

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ..... ii-v

MOTION TO FILE *AMICUS CURIAE* BRIEF 1-4

INTEREST OF THE AMICUS CURIAE 5-7

SUMMARY OF THE ARGUMENT 7-9

ARGUMENT 10-36

I. INTRODUCTION. 10-17

II. STATES HAVE LEGITIMATE INTERESTS IN REGULATING THE RELATIONSHIP BETWEEN SURFACE AND MINERAL OWNERS. 17-21

III. MINERAL OWNERS WHO ABANDON THEIR INTEREST CAN DEPRIVE LOCAL GOVERNMENTS OF NEEDED REVENUES FOR PUBLIC SERVICES. 21-29

IV. SURFACE OWNERS WHO IMPROVE AND DEVELOP REALTY HAVE A REASONABLE EXPECTATION OF OWNERSHIP OF ABANDONED SUBJACENT MINERALS. 29-36

CONCLUSION 37

APPENDIX 1a-10a

TABLE OF AUTHORITIES

CASES: Page

Buchanan v. *Watson*,
290 S.W.2d 40 (Ky. 1956) 19

Campbell v. *Campbell*,
29 Tenn. App. 651, 199 S.W.2d 931
(1946), *Cert. Denied* (1947) 11

Christman v. *Eniveth*,
212 N.W.2d 543 (N.D. S.Ct., 1973) 19

Doochin v. *Rackley*,
- Tenn. - , 610 S.W.2d 715
(1981) 20

Martin v. *Kentucky Oak Mining Co.*,
429 S.W.2d 395 (Ky. Ct. App. 1968) 19

Murray v. *Allred*,
100 Tenn. 100, 43 SW 355 (1897) 11

National League of Cities v. *Usery*,
426 U.S. 833, 96 S.Ct. 2465, 46 L. Ed. 2d
245 (1976) 20

Northcut v. *Church*,
135 Tenn. 541, 188 S.W. 220 (1916) 15

Phipps v. *Leftwich*,
216 Va. 706, 222 S.E.2d 536 (1976) 19

Short v. *Texaco, Inc.*.
- Ind. - , 406 N.E.2d 625
(1980) 29

Skivolocki v. *East Ohio Gas Company*,
38 Ohio St.2d 244, 313 N.E. 2d 374
(1974) 18, 19

TABLE OF AUTHORITIES (Continued)

CASES: Page

Stewart v. *Chernicky*,
439 Pa. 43, 266 A. 2d 259 (1970) 19

Terry v. *Anderson*,
95 U.S. 628, 24 L.Ed. 365 (1877) 29

United States v. *Gillock*,
445 U.S. 222, 100 S.Ct. 1185,
- L.Ed.2d - (1980) 20

Watson v. *Kenlick Coal Company, Inc.*,
422 U.S. 1012, 95 S.Ct. 2639, 45 L.Ed.2d
677 (1975) 16

Wilkes-Barre Township School District v.
Cragan, 403 Pa. 383, 170 A.2d 97
(1961) 19

Woolums v. *Horsley*,
93 Ky. 582, 20 S.W. 781 (1892) 12

Vorhes v. *Dennison*,
300 Ky. 427, 189 S.W.2d 269 (1945) 15

BOOKS AND TREATISES:

Annot. 70 A.L.R.3d 366 (1976) 19

3 Appalachian Land Ownership Task Force,
Appalachian Land Ownership Study,
(1980) 22, 23, 27

5 Appalachian Land Ownership Task Force,
Appalachian Land Ownership Study
(1980) 14, 26, 27

TABLE OF AUTHORITIES (Continued)

BOOKS AND TREATISES: Page

Appalachian Regional Commission, Land Ownership Patterns and Their Impacts on Appalachian Counties, Contract 79-79 (1981) 24, 25, 29, 32, 35

Broad-Form Deed -- *Obstacle to Peaceful Coexistence Between Mineral and Surface Owners*, 60 Ky. L.J. 742 (1972) 12-13

Harry Caudill, *Night Comes to the Cumberlands*, (1962) 13, 16, 17

Land Use Plan for the Kentucky River Area Development District (1973) 32

Kentucky Housing Corporation, Housing Development In Appalachian Kentucky, KAHP Contract Ky-77-(c)-7-A (1979) 23

Kentucky Legislative Research Commission, The Fiscal Impact of the Coal Industry, Report No. 172 (1980) 22

Kentucky Legislative Research Commission, Highway Maintenance in Kentucky, Report No. 168 (1980) 22

University of Kentucky Department of Agriculture, RS-56, Eastern Kentuckians View Their Quality of Life (1979) 24

CONSTITUTIONAL PROVISIONS:

Kentucky Constitution, §172 27

Constitution of the United States, Amendment X 21

TABLE OF AUTHORITIES (Continued)

STATUTES: Page

Indiana Code 1971, §32-5-11-1 ..... 7, 10

Indiana Code 1971, §32-5-11-3 ..... 9, 10

Indiana Code 1971, §32-5-11-7 ..... 8, 10

Kentucky Revised Statutes, §132.020(5) (1980) 27

Tennessee Code Annotated §64-511 (1980) 20

Tennessee Code Annotated §59-8-308k (1980) 20

United States Code, Title 42, Section 1436 Subparagraph F 34

MOTION TO FILE AMICUS CURIAE BRIEF

Save Our Cumberland Mountains, Inc., the David Community Development Corporation, Inc., and the Concerned Citizens of Martin County, Inc., hereby move this Court for permission to file a joint amicus curiae brief pursuant to Supreme Court Rule 36.3 and state as reasons the following:

1. Save Our Cumberland Mountains, Inc. (hereinafter "SOCM") is a not-for-profit corporation organized under the laws of Tennessee. It is a group comprised of about 600 families, many of whom live in the Tennessee coal fields of the Cumberland Mountains and Cumberland Plateau of Tennessee. Several SOCM members are surface owners who have had difficulty obtaining home loans because of severed mineral interests which have been abandoned by mineral owners who are hard to identify and locate.

The David Community Development Corporation, Inc. (hereinafter "DCDC") is a non-profit corporation organized under the laws of Kentucky. Its members live in the community of David, Floyd County, Kentucky. Movant DCDC owns approximately 800 acres of surface rights. The DCDC is unable to properly develop substantial tracts of this acreage for low-income housing because of the severed and separate ownership of the mineral estate underlying it.

The Concerned Citizens of Martin County, Inc. (hereinafter "CCMC") is a non-profit corporation, also organized under the laws of Kentucky. The CCMC has been active in taxation issues, particularly as they relate to the welfare of Martin County, Kentucky and the lack of public services available in the county, in large part due to the low tax base. CCMC believes the low tax base is attributable in large part to the severance of the surface and mineral estates.

2. On May 13, 1981, letters were sent to all parties requesting consent to file this brief.[1] On May 20, 1981 a similar letter was sent to the intervenors, the State of Indiana. Consent was refused by Hon. James M. Buthod, Attorney, on behalf of appellants Eden H. Pond, Edna H. Bobe and Consolidation Coal Company in No. 80-1018 Case in a letter dated May 18, 1981.[2]

The three Petitioners herein are vitally interested, from the perspective of surface owners in

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1. Letters seeking consent to file an Amicus Curiae Brief were sent to all parties by SOCM. The DCDC and CCMC did not send separate requests, anticipating similar responses.

2. Consent was granted by Hon. Vern P. Partenkeiner, Jr. and Hon. Ronald W. Polston, attorneys for the appellees. Consent was also granted to Hon. David A. Miller, Deputy Attorney General for the State of Indiana.

Consent was not granted by Mr. Buthod and Hon. Charles R. Nixon, attorneys for the appellants.

and residents of the Southern Appalachian Region, in litigation involving challenges to the validity of state legislation regulating the relationship between surface and mineral owners, particularly when, as here, that legislation is challenged on federal constitutional grounds and the result will affect all states including Tennessee and Kentucky and the Appalachian Region.

The three Petitioners herein will emphasize in their brief the interest of states in regulating the relationship between surface owners and owners of subjacent mineral estates. In this context, they believe that the facts of the relationship between surface and mineral owners in the Southern Appalachian areas as presented in their brief are important to the Court's consideration and determination of this case. The history of the broad-form or long-form deed, traditionally used to sever mineral ownership in Kentucky and Tennessee and the situation of surface owners who want to develop their land when severed mineral estates have been abandoned will be discussed for the Court.

Virtually every state in the coal fields has attempted to adjust this relationship to provide greater equities to surface owners as Indiana has done in this case.

5. Some members of SOCM have tried to improve their homes. These members own only the surface rights, but are unable to obtain loans

because of severed, mineral ownership. The DCDC has attempted to develop an apartment complex on its surface lands, but because an absentee owner owns the mineral rights, the DCDC's efforts to obtain a construction loan collapsed. Because there are large numbers of severed mineral estates in the coal fields of East Kentucky and Tennessee, the two groups strongly believe these cases are typical of other situations and believe these facts should be before the Court in this case.

6. The CCMC are concerned with the relationship between the minimal levels of taxes paid by corporations and individuals and the poor quality of public services available in the Eastern Kentucky and Tennessee regions. Because the result of the Indiana case will affect similar legislative efforts in other states, the CCMC believes that the Court should consider this relationship as well.

WHEREFORE, Save Our Cumberland Mountains, Inc., the David Community Development Corporation, Inc., and the Concerned Citizens of Martin County, Inc. move this Court for permission to file an amicus curiae brief in the two above-styled consolidated cases and for any other appropriate relief.

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INTEREST OF THE AMICUS CURIAE

The David Community Development Corporation, Inc. (DCDC) is a nonprofit corporation organized under the laws of Kentucky. The DCDC purchased 800 acres of surface rights in the

community of David, Floyd County, Kentucky in 1975. The DCDC has been developing this land for low-income housing. Because the minerals underlying this surface are owned by many absentee owners, the DCDC has been hindered in its attempts to develop the land and it is, therefore, concerned about its rights as surface owners.

Save Our Cumberland Mountains, Inc. (SOCM) is a nonprofit corporation organized under the laws of Tennessee, comprised of approximately 600 member families residing in the East Tennessee coal fields. Several SOCM members who are surface owners have had difficulty in obtaining home loans because of abandoned mineral interests clouding their titles. Accordingly, SOCM is concerned about the rights of surface owners and the relationship between those rights and the rights of mineral owners.

The Concerned Citizens of Martin County, Inc. (CCMC) is a nonprofit corporation organized under the laws of Kentucky. The CCMC is comprised of members residing in Martin County, Kentucky. The CCMC has been particularly concerned with tax issues, as they relate to the lack of services in Martin County and Eastern Kentucky. CCMC feels that the absentee ownership of large tracts of minerals in Martin County, has contributed to the low tax base in the county and the lack of public services available to the county's residents.

We agree with the arguments of the appellees and wish to add some additional considerations. All three groups assert their interest as surface holders in this litigation involving a challenge to the validity of state legislation regulating the relationship between surface and mineral owners. The outcome of this litigation will have important consequences to all states seeking solutions to the impediments of abandoned severed mineral estates to the further development of the surface above these mineral interests.

SUMMARY OF ARGUMENT

The Indiana Mineral Lapse Statute[1] is a reasonable attempt to adjust the relationship

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1. Ind. Code § 32-5-11-1, *et seq.* (1980).

between surface and mineral owners. Most mineral rights in the Appalachian coal fields derive from "broad-form" or long-form deeds which gave the mineral owner great power to develop and control the mineral and surface rights.

The conflicts arising from this severance have caused many legislatures in the coal fields to attempt to adjust this relationship. The Supreme Court of all such states dealing with this problem (except Kentucky) have permitted reasonable adjustments considering the long-standing problems between mineral and surface owners.

The statute in question herein is a reasonable attempt to permit surface owners to develop abandoned mineral lands, not only for the extraction of coal, but for other purposes, such as the development or improvement of housing. The lack of adequate housing stocks has been a chronic problem in Eastern Kentucky. Two of the *amicus curiae* herein have been thwarted in their attempt to so develop their surface rights because of the absentee ownership of the severed mineral estate.

The requirement that a mineral owner can protect his interest by filing a statement of claim[2] is a reasonable attempt to induce absentee severed mineral owners to reveal their identities to surface

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2. *Id.*, § 32-5-11-7.

owners who wish to develop the land. Surface owners can then contact mineral owners to purchase the rights or obtain consent to develop. Unknown severed mineral ownership itself has been a detriment to development.

The provision of the statute that protects mineral owners who pay taxes[3] is an inducement for all mineral owners to pay property taxes. The low tax base in Eastern Kentucky and Tennessee has meant that public services in the region are far below average. By making all such "dormant" mineral lands lapse to surface owners, the surface owner can develop the land in a way that will increase the tax base and facilitate new and better public services.

Finally, the surface owner who pays taxes on a tract and maintains the property during a mineral owner's long-standing absence can be determined to be the owner of the entire tract. The surface owner, who shows sole interest in the land for over twenty years, can be entitled under State law to sole ownership.

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3. *Id.*, § 32-5-11-3, defines "use" of minerals, in part, as ". . . when taxes are paid on such mineral interest by the owner thereof."

ARGUMENT

I. INTRODUCTION.

The Indiana Mineral Lapse Statute does little to affect the surface owner-mineral owner relationship. It provides that if mineral owners do not use the property for 20 years, the property lapses to the surface owner.[4] "Use" under the law includes the payment of property taxes by the mineral owner.[5] Further, a mineral owner can protect this interest by filing a statement of claim; this statement can be filed within 2 years of enactment of the legislation or 20 years of non-"use" of the mineral rights, whichever is greater.[6] Clearly, any of these actions that the state requires of mineral owners to protect their interests are minimal.

The Indiana Mineral Lapse Statute is an attempt by that state to regulate the relationship between surface and mineral owners of severed lands. Long standing problems arising from this relationship in the Eastern coal fields have given states important interests concerning this relationship.

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4. Id., §32-5-11-1.

5. Id., §32-5-11-3.

6. Id., §32-5-11-7.

Coal fields have long been one of Appalachia's richest resources, producing energy for the region and the nation, and presenting the potential for significant numbers of jobs. How we manage this great natural resource and how we decide to order the social relationship surrounding it have always been important issues for Appalachia, issues with serious impact on the general welfare. Now, in a time when the pressure on all energy sources is so intense, the need for wise and socially responsible handling of regional coal reserves and for the just resolution of disputes among those affected by the development of those reserves has become more crucial than ever.

From an early date, Tennessee and Kentucky courts recognized the legal existence of severed estates, estates in which title to some or all of the minerals connected with a tract of land could be vested in one person, while title to the surface could be vested independently in another. *See for example, Murray* v. *Allred,* 43 S.W. 355, 100 Tenn. 100, 119-20 (1897) These kinds of estates proliferated all over the Appalachian coal fields, as national industrial interests began to realize the extent of coal deposits in the region. Some of the severing instruments were relatively cryptic about what rights the mineral owner possessed. *See, e.g., Campbell* v. *Campbell,* 199 S.W.2d 931, 29 Tenn. App. 651 (1946), *cert. denied* (1947). Others

contained extensive waiver of damages clauses, which sometimes extended for pages. This latter type of conveyance came to be commonly known as the "broad form deed." See example in Appendix, at 1a-3a. Such a deed was a sweeping document, usually drafted by a large coal or land-holding company, which subordinates the surface estate in land almost completely to the mineral estate. Also called the long form deed, because of its length and complexity, the broad form deed in general purports to confer on the holder of the mineral estate the right to use the surface state in any way necessary and convenient for the recovery of the minerals. In the vast majority of these deeds, the grantor-surface owner reserved the right to use his land for all purposes not inconsistent with the rights granted the mineral holder. Notably, the intention of the parties aside, the right to recover the minerals by strip mining and therefore destroy the surface estate is not expressly mentioned in the broad form deed. Relying on the explanation and representations of the buyers agent, illiterate grantors frequently acknowledged these broad form deeds by the wavering "X". *See, e.g., Woolums* v. *Horsley*, 93 Ky. 582, 20 S.W. 781 (1892) (where the mineral interests were acquired for 40 cents per acre); Note, Broad Form Deed - Obstacle to Peaceful Coexistence

Between Mineral and Surface Owners, 60 Ky. L.J. 742 (1972).[7]

The agents for the land and coal companies did their jobs well. By conservative estimate, title to the minerals underlying some ninety percent of the land in the Kentucky counties of Bell, Harlan, Letcher, Perry, Knott, Pike, and Floyd is severed from the general surface by broad form deeds. A lesser percentage of the land is similarly affected in Knox, Whitley, McCreary, Leslie, Lawrence, and Morgan counties in eastern Kentucky and a few counties in western Kentucky.

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7. "When the highland couple sat down at the kitchen table to sign the deed their guest had brought to them they were at an astounding disadvantage. On one side of the rude table sat an astute trader, more often than not a graduate of a fine college and a man experienced in the larger business world. He was thoroughly aware of the implications of the transaction and of the immense wealth which he was in the process of acquiring. Across the table on the puncheon bench sat a man and woman out of a different age. Still remarkably close to the frontier of a century before, neither of them possessed more than the rudiments of an education. Hardly more than 25 percent of such mineral deeds were signed by grantors who could so much as scrawl their names. Most of them "touched the pen and made their mark," in the form of a spidery X, in the presence of witnesses whom the agent had thoughtfully brought along. Usually the agent was the notary public, but sometimes he brought one from the county seat. Unable to read the instrument or able to read it only with much uncertainty the sellers relied upon the agent for an explanation of its contents - contents which were to prove deadly to the welfare of generations of mountaineers' descendants." H. Caudill, Night Comes to the Cumberlands, 73-74 (1962).

A 1980 study reveals that, of 11 Tennessee coal producing counties researched, minerals were severed from an average 11.9% of total county acreage. The percent of these counties range from 3.01 to 31.56.[8] See Appendix at 4a.

Over the years, many legal disputes arose in Tennessee, Kentucky and elsewhere between surface owners and mineral owners as to their respective rights. The execution of a deed that severed a piece of real property was, on the one hand (like any other conveyance), the completion of an agreement between the parties, the consummation of a contract. On the other, it was also, unavoidably, the beginning of a new and on-going relationship. The surface owner and mineral owner became very special kinds of neighbors, neighbors whose rights and interests in their respective pieces of real property were more intimately intertwined and interdependent than almost any the law had seen before. Throughout this century Courts and legislatures have been devising rules and guidelines to order this relationship and to adjust the rights of the parties involved.

Currently, Kentucky and Tennessee courts follow the common law rule of adverse possession of minerals. This rule requires actual mining or related

8. 5 Appalachiar Land Ownership Task Force, Appalachian Land Ownership Study, at 11 (1980) (as submitted to the Appalachian Regional Commission).

activities for the statutory period to constitute actual, open, notorious, continuous, and hostile possession. "Mere possession of the surface will not give title to the minerals by adverse possession." *Vorhes* v. *Dennison,* 300 Ky. 427, 189 SW2d 269, 271, (1945). Accord, *Northcut* v. *Church,* 135 Tenn. 541 188 SW 220 (1916).

Specifically, under the present adverse possession law in Tennessee and Kentucky described above, it is impractical, and sometimes impossible for surface owners to reunite subjacent abandoned mineral interests with their surface. Thus, the nature of a mineral estate is such that once it is severed, that severance is perpetual whether or not mining activity takes place on the property, or taxes paid. This creates a perpetual cloud on the title of the surface owner even when the minerals have already been mined out.

Moreover, a surface owner is only a third party to any conveyance of the minerals. As a result, he may have no idea who, if anyone, holds a valid claim to minerals under his land and by implication, to the easement over the surface necessary to extract them.

The usual and customary methods of mining coal at the time most broad form deeds were entered into were shaft and tunnel mining. As the technology of strip-mining developed, the potential disruption of the surface increased dramatically,

beyond anything known to or even imagined by the parties who signed the deeds.

Surface owners often found their surface strip-mined with a technology and ferocity unknown to the parties when the mineral rights were severed. Mineral owners could destroy the surface owners home during mining and then return years later to repeat this process. Surface owners of a mined out tract could not develop the surface safely because mineral owners could use their easements to build massive haul roads to destroy any surface development.[9]

> "But technology advanced. The steam shovel grew into a mighty mechanism and was replaced by gasoline and diesel-powered successors. "Dozers" and other efficient excavators were perfected. Ever cheaper and safer explosives came from the laboratories. These marvelous new tools enabled men to change the earth, abolishing its natural features and reshaping them as whim or necessity might require . . ."

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9. See, H. Caudill, *Night Comes to the Cumberlands, supra,* at 305-318. See also, Justice Douglas' comments in *Watson* v. *Kenlick Coal Company, Inc. et al,* 422 U.S. 1012, 95 S.Ct. 2639, 45 L.Ed. 2d 677 (1975). (Douglas, J., dissenting from denial of certiorari) "This case is unfortunately no more than a mere footnote in the continuing tragedy of environmental and human dispoliation:. The rape of Appalachia for its precious coal has been a dark and dismal chapter in our nation's history. . . ." Id, at 1013, 95 S.Ct., at 2639.

> "Next came rulings which gave the companies the power to "divert and pollute" all water "in or on" the lands. With impunity they could kill the fish in the streams, render the water in the farmer's well unpotable and, by corrupting the stream from which his livestock drank, compel him to get rid of his milk cows and other beasts. They were authorized to pile mining refuse wherever they desired, even if the chosen sites destroyed the homes of farmers and bestowed no substantial advantage on the corporation." H. Caudill, *Night Comes to the Cumberlands, supra,* at 306.

II. STATES HAVE LEGITIMATE INTERESTS IN REGULATING THE RELATIONSHIP BETWEEN SURFACE AND MINERAL OWNERS.

As effects of the mining industry on the land, the people, and the overall environment became more pronounced, conflicts between surface owners and mineral owners became increasingly prevalent. Suface owners resorted to state courts asking them to interpret deeds according to the intent of the parties at the time of signing, arguing that the grantor could have granted the extensive disruption of surface caused by strip-mining when the technology was unknown at the time the deed was executed.

However, in most states, courts and legislatures have attempted to solve the problem of destruction of the rights of surface owners. Most courts dealing

with this problem have said regulating this relationship is clearly within the domain of the state.

The Ohio Supreme Court aptly expressed the quandry facing the state judiciaries in cases of this kind when it said:

> [It is] a valid assumption that strip-mining for coal is a more modern technologically advanced method to provide the mineral estate owner a fuller enjoyment of his property. Yet, we cannot ignore the additional fact that strip-mining, although similar to deep mining in so far as both represent a means to a legitimate end, necessarily and unavoidably causes total disruption of the surface estate. Time honored rules of law, meant to insure the mutual enjoyment of severed mineral and surface estates, cannot be blindly applied to resolve a question involving the right to strip-mine. This is true, not because those rules lack present vitality, but because they are dependent upon assumptions wholly irrelevant to strip-mining. *Skivolocki* v. *East Ohio Gas Company*, 38 Ohio St. 2d 244, 249, 313 N.E.2d 374, 377 (1974).

As a result of these inadequacies of prior rules, state courts throughout the coal fields began trying to adjust their legal doctrines to take account of the drastically changed circumstances in the coal industry and began groping for some way to protect the legitimate interests of *both* parties.

In a number of cases, courts ruled that the intent of the parties at the time of the conveyance was key and that the various circumstances surrounding execution of a deed should be examined for their bearing upon that intent. As the practice of strip-mining has grown and spread, a distinct trend has emerged in the case law to the effect that an intent to allow strip-mining cannot be presumed under certain deeds, especially deeds that predated the advent of strip-mining. See *Phipps* v. *Leftwich*, 216 Va. 706, 222 S.E.2d 536 (1976)[10]; *Skivolocki* v. *East Ohio Gas Co.*, 313 N.E.2d 374, 39 Ohio St. 2d 244 (1974); *Stewart* v. *Chernicky*, 439 Pa. 43, 266 A.2d 259 (1970); *Wilkes-Barre Township School District* v. *Corgan*, 403 Pa. 383, 170 A.2d 97 (1961). Conversely, when strip-mining was the clearly predominant method of mining coal at the date of severance, the North Dakota Supreme Court had no trouble upholding the mineral owner's right to strip-mine on that basis. *Christman* v. *Emineth*, 212 N.W.2d 543 (N.D. S.Ct. 1973), Annot. 70 A.L.R. 3d 366 (1976).

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10. Kentucky courts, alone in the country, consistently rebuffed the claims of surface owners who, at minimum sought compensation for destruction of their homes and land. *See, e.g., Buchanan* v. *Watson*, 290 SW2d 40 (Ky. 1956); *Martin* v. *Kentucky Oak Mining Co.*, 429 SW2d 395 (Ky. Ct. App. 1968) (1905. broad form deed: court held mineral owners' implied easement, to use surface necessary to extract minerals allowed complete destruction of the surface by strip-mining, if not done wantonly or willfully.)

Earlier this year, the Tennessee Supreme Court upheld against constitutional challenge the Tennessee Surface Owner Protection Act of 1977. *Doochin* v. *Rackley*, Tenn., 610 SW2d 715 (1981); Tenn. Code Ann. §§64-511, 59-8-308k (Supp. 1980). The purpose of this act was to achieve statutory clarity of the respective rights of surface and mineral owners when those interests are severed. The Act sets up a presumption that the intention of the parties signing any mineral severance instrument, was that "the minerals be extracted only in the principal manner and method of mineral extraction prevailing in Tennessee at the time the instrument was executed." Tenn. Code Ann. §64-511.

In *National League of Cities* v. *Usery*, 426 US, 833, 96 S.Ct. 2465, 49 L.Ed. 2d 245 (1976), this Court held that a federal statute regulating wages of state employees was unconstitutional because it "operate[d] to directly displace the State's freedom to structure integral operations in areas of traditional government functions." *Id*, at 852, 96 S. Ct., at 2474. This Court, while applying the federal rules of evidence in a federal criminal prosecution of a state senator who claimed an evidentiary privilege under state law, said that "legislation which directly regulates the internal functions of States" clashed with *National League of Cities, supra. United States* v. *Gillock*, 445 U.S. 222, 100 S. Ct. 1185, 1192, - L.Ed.2d - , (1980).

It is clear in the cases discussed above that states have a particular interest in and ability to design the regulation of the special relationship between surface and mineral owners. Another set of problems from that discussed above arising from this special relationship is addressed by the Indiana Mineral Lapse Statute and similar statutes: the difficulty and sometimes the impossibility of development by surface owner, whether for mineral production or other uses such as residential or industrial, created by the apparent abandonment or extended non-use of the mineral interests. (See U.S. Const. amend. X, which says:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people".)

III. MINERAL OWNERS WHO ABANDON THEIR INTEREST CAN DERIVE STATE AND LOCAL GOVERNMENT OF REVENUES FOR ESSENTIAL PUBLIC SERVICES.

The Indiana Statute herein defines "use" of minerals in part as ". . . when taxes are paid on such mineral interest by the owner thereof". Thus, only mineral owners who do not pay taxes are affected by this statute. Non-payment of taxes and the low tax base of Eastern Kentucky and Tennessee has meant that essential public services are below average.

Although Appalachian Kentucky and Eastern Tennessee are part of a naturally wealthy area, blessed with large concentrations of coal and lush green mountains, the region suffers from a chronic lack of public services. Services such as public water and sewerage systems, education, highways, libraries, and housing are substandard, especially considering the wealth of the region. Inadequate local tax revenues, in part caused by non-taxpaying abandoned mineral lands, hinder local attempts to provide these services.[11]

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11. In Eastern Kentucky, water and sewerage services are usually provided by governmental entities. In many counties, water services do not extend far beyond incorporated city limits and often services provided do not conform to state water quality standards. Some counties, such as Martin County, Kentucky have no sewerage system. See 3 Appalachian Land Ownership Study, Appalachian Land Ownership Task Force, at 82 (1980) (as submitted to the Appalachian Regional Commission).

Public roads and highways are not adequately maintained in many cases. The Kentucky Bureau of Highways concedes that in 1980 county roads for which it had primary responsibility were not adequately maintained. Eastern Kentucky roads require frequent repair of damage from heavy coal truck traffic. Tennessee has similar problems. Some of these roads become dangerous with poor maintenance -- such as roads along mountainsides without shoulders. See Kentucky Legislative Research Commission, Highway Maintenance In Kentucky, Report No. 168, at 80 (1980). See also, Kentucky Legislative Research Commission, The Fiscal Impact of the Coal Industry, Report No. 172, at 13 (1980).

The lack of adequate housing in Eastern Kentucky is very severe. According to one study in 1977 there were only seventeen (17) vacant suitable homes in Pike County, Kentucky, (which is 0.06% of the housing stock).[12] Much of the available housing is substandard. Harlan County, for example, is estimated to have 53% substandard housing.[13] The Commonwealth of Kentucky, through the Kentucky Housing Corporation, has therefore intervened and provided, by 1979, grants and loans for about 3,000 homes in the region. But as admitted by the Kentucky Housing Corporation, the housing stock is still inadequate.[14]

There are other services lacking in the region. For example, garbage collection is poor. Public library facilities are sometimes inadequate. Martin County, Kentucky, the second leading coal producing county in Kentucky, has no public library at all.

Eastern Kentucky and Tennessee are heavily dependent on the coal industry. By 1970, farming and farm work had become of negligible significance

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12. 3 Appalachian Land Ownership Study, supra, at 140.

13. Id, at 84.

14. Kentucky Housing Corporation, Housing Development In Appalachian Kentucky, KAHP Contract Ky-77-(c)-7-A, at 1 (1979). Kentucky Housing Corporation was created pursuant to Ky. Rev. Stat. §198A (1980), as a quasi-governmental housing agency.

as a source of earned income. *University of Kentucky Department of Agriculture,* RS-56, *Eastern Kentuckians View Their Quality of Life,* at 4 (1979). While the area has benefited economically from the growth of the coal industry, mineral ownership by out of state absentee owners inhibits the industry from significantly assisting in providing these services. About 50% of all minerals in Eastern Kentucky are owned by absentee owners, who tend to bring the profit derived from mining to their home regions rather than investing them in needed services in Eastern Kentucky.[15]

Obviously, with greater revenues at the state and local level, communities in Eastern Kentucky and Tennessee would be better able to provide these services. Revenues from severed mineral lands are not extensive and some severed mineral owners pay no taxes at all. For example, one of the largest severed mineral holders in Martin County owns about 10,000 acres of mineral lands and in 1979 paid no property taxes at all. See Appendix, at 6a. It is clear that many severed mineral owners do not pay property taxes in Eastern Kentucky and

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15. Appalachian Regional Commission, Land Ownership Patterns and Their Impact on Appalachian Counties, Contract 79-79, at 32 (1981).

Tennessee.[16] There is no reason to believe that this is a recent development.

> "It would be wrong, however, to give the impression that the problem is merely a technical one. In the coal counties of the region, the coal owners traditionally have had their own way, often using their political muscle to make or break the political fortunes of local officials--especially tax assessors. In many cases, the companies have supplied assessors with their own assessments of property values, and assessors have had little choice but to accept them. Where attempts are made to alter the traditional patterns of under-assessment, the coal owners may simply refuse to cooperate, as was seen in Eastern Kentucky where they failed even to return tax forms regarding their properties."

Appalachian Regional Commission, Land Ownership Patterns and Their Impacts on Appalachian Counties, Contract 79-79, at 88 (1981).

In Eastern Tennessee, the problems are similar.

> "In many cases, owners of property with severed minerals have no idea of the situation which they face. Tennessee has no requirement

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16. Id, at 21-33. See also, Appalachian Regional Commission, Land Ownership Patterns and Their Impacts on Appalachian Counties, Contract 79-79, at 68-98 (1981).

that mineral owners accurately describe and locate their property, and tax records on mineral rights are poorly kept, with very few county assessors even having knowledge of the existence of all severed mineral properties or who controls them. In many cases, the original severance took place over one hundred years ago and often this severance has been dropped from the surface title, giving prospective owners no warning.

One example is an Anderson County deed in which the coal was excluded in an 1856 transaction. The fact of this encumberance was not recorded when the property again changed hands in 1883 and a title search by a bank in 1972 failed to uncover the earliest deed in the chain of title which was not accurately referred. Coal Creek Mining Company obtained title to the mineral rights in the 1890's and the present landowner only accidentally discovered in 1978 that a large coal land company controlled the minerals beneath the property. In Van Buren County, although a number of residents have deeds stating that their minerals are excepted, being presently controlled by J. M. Huber Corporation, the county has no severed mineral properties on its tax rolls whatsoever." See 5 Appalachian Land Ownership Study, *supra,* at 24-25.

So, taxes assessed for severed mineral lands tend to be extremely low. In Eastern Kentucky, the severed mineral owner paid about $.002 per acre in

property taxes in 1978-79.[17] Taxes assessed on severed mineral lands is far less than taxes collected for other lands. For example, in Johnson County, Kentucky, a large sample of corporate severed mineral holders paid 800% less per acre than other corporations in the county in 1979; a sample of individual mineral holders paid 75,000% per acre less property taxes than other individuals.[18]

With such low tax burdens there can be no justifiable reason for severed mineral owners not paying property taxes. Non-payment of property taxes means that Kentucky and other mineral producing states, already strained in the assistance they can provide to the coal counties, are even less able to assist in providing needed services to these counties and localities. Severed minerals cover substantial amounts of coal lands in Eastern Kentucky and Tennessee.[19] Loss of tax revenue from non-payment of taxes could be significant.

The Indiana Mineral Lapse Statute applies only to severed mineral lands for which no taxes were

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17. Kentucky Law places a very small tax on unmined minerals. See KRS §132.020(5) (1980) which places the tax at 1/10¢ per $100 of assessed. Under Kentucky Law property must be assessed according to its fair cash value. Ky. Const. §172. This partly accounts for low tax receipts of unmined minerals.

18. See 3 Appalachian Land Ownership Study, at 179.

19. See 5 Appalachian Land Ownership Study, at 11.

paid for over 20 consecutive years. This statute will promote use of the property in a manner which will increase the local tax base, which in turn will help provide needed public services.

All the while the burden on the property tax base is being borne by the surface owner. See discussion at 26-27, *supra.* Because the surface owner is maintaining the land during the mineral owner's absence, and because the surface owner is paying most of the region's property taxes, the Indiana legislature was reasonable in determining that a mineral owner's interest should lapse, where no property taxes are paid on the minerals or other active claim to the minerals is made. The surface owner who solely cares for the land and pays taxes on it for over 20 years is reasonably entitled to sole ownership. States should be free to make this determination, as they do with other statutes of limitations. (See *Terry* v. *Anderson,* 95 U.S. 628, 24 L.Ed. 365, (1877)).

"An analysis of economic development patterns in coal counties of Appalachia must start, then, with several observations: the dominant single industry development is highly dependent upon the control of a few, primarily corporate hands, who control the land and resources; while large amounts of wealth are produced, much of it leaves the region. Even the wealth which stays in the region is unevenly distributed leading to the persistence of poverty

amidst riches." Land Ownership Patterns and Their Impact on Appalachian Counties, *supra*, at 105.

"[T]he legislature adopted means which . . . themselves provide a reasonable time and a simple and inexpensive method, taking into consideration the nature of the case, for preserving [mineral] interests." *Short* v. *Texaco, Inc.*, - Ind. - , 406 N.E.2d 625, 631 (1980).

IV. SURFACE OWNERS WHO IMPROVE AND DEVELOP REALTY HAVE A REASONABLE EXPECTATION OF OWNERSHIP OF ABANDONED SUBJACENT MINERALS.

As discussed, abandoned and other unused mineral estates do not provide much assistance to local tax revenues and consequently contribute to inadequate public services. Further, the existence of such mineral estates deter development of services -- such as housing -- by the surface owner. Lenders are reluctant to invest in such projects where minerals are severed, no matter how "absent" the mineral owner may be. Even if mineral owners filed a statement of interest, which would protect their holdings under the Indiana Lapse Statute, surface owners could identify and contact these mineral owners, for the purpose of surface development.

The Kentucky River Area Development District[20] located in the heart of the Eastern Kentucky coalfields explained the relationship between the depressed economic condition in Eastern Kentucky and the severance of mineral estates by the broad-form deed as follows:

> "In the development of their region-wide Land Use Plan, its compilers have been confronted repeatedly with one basic, all-important factor -- the extent to which ownership of surface and sub-surface (minerals) lies with separate parties. While no information exists on the exact percentage of land with divided ownership, it can be estimated reasonably that from 50 to 75 percent of all the area's land either has such separate ownership or the owners of both are interested primarily in extraction of sub-surface minerals.
>
> "This situation increases the difficulty of successful development planning of surface rights, especially where the 'broad-form' deed to minerals exists.
>
> "Thus, although an average of more than 80 percent of the area's land is identified as forests on the basis of the present and practical use of the surface, if the sub-surface mineral rights are owned by anyone other than the

20. The Kentucky Area Development District is a statutorily created, multi-county planning and development agency, established pursuant to Kentucky Revised Statute §147 A. 050 *et. seq.*

owner of the surface, such classification is erroneous. Production of timber is a slow process and 20, 30, or 40 years of timber development can be wiped out overnight by a decision to disturb the surface to reach mineral deposits.

"Even areas not likely to be subjected to mineral extraction are affected by this situation, for many of them are required for use in the processing and transportation of extracted minerals.

"A result of this situation has been the reluctance of people to invest in non-mineral development. The existence of such an abundance of minerals, primarily coal, whether their extraction is currently economically possible, or not, deters investment in other fields of economic enterprises.

"As matters now stand, the decisions regarding the areas' economic and social future development rests almost totally with owners of the areas' sub-surface rights. This is not a state policy, but a policy inherent in the present legal status.

"Common sense dictates that local and state governments recognize the existence of this unofficial policy-making authority and act to establish an official public policy. The choices can be stated quite simply: shall the area where needed minerals exist so abundantly be dedicated wholly to the provision of those minerals to meet national needs, or does the long range goals of the area and nation require that

> ownership and production of minerals be coordinated with all other economic and social development?
>
> "Only when such a public policy is clearly enunciated can there be created a worthwhile plan for the future on which can be based sound decisions for private and public investments.
>
> "The reader, and student of this and similar documents should keep in mind that the above described condition is prevalent throughout the District. The proposals contained herein, therefore, are presently subject to changes based on private, rather than public decisions." *Land Use Plan for Kentucky River Area Development District*, prologue, (1973).

Perpetual severance of minerals can inhibit the development and growth of whole communities.

Two of the *amicus curiae*, the DCDC and SOCM, have had plans for development of their surface tracts thwarted by the apparently abandoned subjacent mineral estate.[21] Surface owners like the DCDC and SOCM can reasonably expect to develop abandoned property.

The town of David consists of about 1,000 acres in South Eastern Floyd County, Kentucky. The town is a former coal mining camp, from which

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21. The difficulty of ascertaining the identity of mineral owners makes it hard to determine if the mineral owner ever intends to return. See Land Ownership Patterns and their Impact on Appalachian Communities, *supra*, at 88.

coal mining occurred, starting in 1941 until 1968, when the coal mines closed. The coal operator owned surface rights and leased the mineral rights from 3 co-owners. The operator built about 35 homes in David which were leased to the miner's families. When the coal mines closed in 1968 the coal operator sold the surface to a land holding company but maintained its mineral leases. At that time, the coal operator left the David Community. Most, but not all of the coal had been mined.

The new surface owner rented the coal camp homes to the remaining residents, but because poor services were being provided by the landlord, members of the community formed the David Community Development Corporation, Inc. (DCDC). The stated purposes in their articles of incorporation included providing greater financial and other opportunities for lower income people in David and Eastern Kentucky.

The DCDC, through local contributions and loans, purchased 800 surface acres of the David Community from their landlord in 1975. The DCDC then sold all remaining homes in David to the tenants at reduced prices. The new owners renovated their homes themselves taking pride in their purchases. Town clean-ups were organized. The DCDC assisted the development of a new community water system and built a sewer system. Then they constructed a new sub-division for lower

income families. They further designed a housing development plan.

In 1980, the DCDC wanted to construct a new 48 unit apartment complex for mixed income tenants. The U.S. Department of Housing and Urban Development (HUD) gave tentative approval to the project and set aside funds for construction under the "Section 8" program. See 42 U.S.C. 1436(f). HUD, however, demanded that the mineral owners release or waive their interest in the tract.

The DCDC approached the coal operator, asking for this release, the area being previously mined. The operator answered that it only had a mineral lease and that there were 27 individual owners, promising to contact the owners. The DCDC much later asked the operator about the status of its request for a release, but doubt was expressed about whether all 27 owners could be found. Then one of the owners told the DCDC that the operator had notified him of the DCDC request an hour before and the owner said that he would need time to decide whether a release was wise. The HUD construction loan was then lost; obtaining the written release of 27 unknown owners was beyond its powers. See Appendix, at 8a.

Further, the DCDC wants to build a new sub-division in the best housing site in David. However, coal is still beneath this area (although it may be inaccessable). It may be difficult or

impossible for the DCDC to build any houses here, because of the encumbrance of the mineral rights.

Several SOCM members live in residential areas of Hamilton County, near Chattanooga where mineral rights were originally severed over 100 years ago and mineral reserves were mined out by deep mining methods early on this century.

Mineral reservations in some of these deeds were omitted over 30 years ago and there has been no mining since the company left in the 1940's.

One SOCM member subdivided part of his land into two acre lots for residences. Several purchasers of these lots obtained bank loans to build houses. However, around 1977, landowners began receiving rejections to their loan applications. Since then they and other surface owners on and near the Cumberland Plateau, have been unable to obtain loans to build their residences. Banks based their refusals on a policy of not granting loans on property where mineral rights are owned by a third party. See Appendix at 9a-10a, for an example of letters received by several SOCM members.

As demonstrated from the opinions of the Kentucky River Area Development District, these problems are typical in the coal fields. See generally, Land Ownership Patterns and Their Impacts on Appalachian Counties, *supra,* at 101-121.

The problems discussed above adversely affect the value of the surface, even in established and developing residential communities. The state has a strong interest in regulating the relationship between surface and mineral owners to stimulate both mineral and surface development. The problems of perpetual clouds on surface titles and problems identifying mineral owners in order to attempt to purchase their interest are legitimate concerns of a state legislature.

A Mineral Lapse Statute requiring merely recording a claim, paying taxes, or extraction of minerals, allowing abandoned interests to lapse and revert to the surface owner is a legitimate way to stimulate development.

CONCLUSION

For the reasons set forth in this brief, it is respectfully requested that the Indiana Mineral Lapse Statute be upheld as constitutional and that the decision of the Indiana Supreme Court be affirmed.

Respectfully submitted,

JOHN M. ROSENBERG and
DAVID RUBINSTEIN
Appalachian Research and Defense Fund of Kentucky, Inc.
P. O. Box 152
Prestonsburg, Kentucky 41653

CANDY A. CULIN
Save Our Cumberland Mountains, Inc.
P. O. Box 457
Jacksboro, Tennessee 37757

Attorneys for Amicus Curiae

APPENDIX

THIS INDENTURE, made this 17th day of June, 1912, between James Dobson and wife Sarah Dobson, Henry Dobson and wife Elizabeth Dobson of Perry County, Kentucky, party of the first part, and Vizard Investment Company, a corporation incorporated under the laws of the State of Alabama, of the second part.

WITNESSETH, That for and in consideration of Sixty one and 20/100 dollars, and other good and valuable consideration in hand paid by party of the second part to party of the first part, the receipt of which is hereby acknowledged, the party of the first part does hereby sell and convey unto the party of the second part, its successors and assigns, all the coal, minerals and mineral products, timber, rights and privileges as hereinafter mentioned on and under the hereinafter described boundary of land, all coal minerals, and mineral products, all oils and gases, all salt minerals and salt water, fire and potters clay, all iron ore, all stone, and such of the standing timber under fourteen inches in diameter as may, or by the "Grantee" herein, be deemed necessary for mining purposes, and the exclusive rights of way for any and all railroads and ways and pipe lines that may hereafter be located on said property by the "Grantee" its successors or assigns, under authority of said "Grantee" or assigns, in, under concerning or appurtenant to the hereinafter described tract of land, together with the right to enter upon said

lands, use and operate the same and surface thereof and make use of and for this purpose divert water courses thereon in any and every manner that might be deemed necessary or convenient for mining and therefrom removing or otherwise utilizing the products of said minerals, and for the transportation therefrom of said articles, and the right to use of such, as well as for the removal of the products taken out of any other land owned, or hereafter acquired by the "Grantee". Free excess to, upon and over the said land is hereby conferred upon the "Grantee" for the purpose of surveying and prospecting the aforesaid property and interests: but there is reserved in this deed to the "Grantor" coal for his own family use for fuel, also all the timber upon said land, except that necessary for mining and the purposes hereinbefore mentioned, and the free use of land for agricultural purposes, so far as such use is consistent with the rights hereby sold.

Lying and being in the County of Perry, State of Kentucky, on the waters of Left Fork of Second Creek, and bounded as follows:

[Description Omitted]

The "Grantor" further covenants that he is seized in fee simple of said land and out of the rights thereon and thereunder, in actual possession thereof, and has good right and full power and authority to convey same, and that "Grantee" shall and may have, hold and enjoy the rights granted

herein, free from eviction or disturbance by title paramount to that conveyed by this deed, and that the land including the interests hereby sold and conveyed are free from all liens or encumbrances.

TO HAVE AND TO HOLD, said property unto the party of the second party, its successors and assigns forever. And said party of the first part hereby releases all their rights, title and interest in said property, herein conveyed, and Covenant to Warranty Generally the title thereto.

IN TESTIMONY WHEREOF, the party of the first part hereunto set their hands the year and date first above written.

James Dobson, (Seal)

Sarah Dobson (Seal)

his
Henry X Dobson (Seal)
mark

her
Elizabeth X Dobson (Seal)
mark

Attest:
E.C.Wooton.

* * * * * * *

TABLE III: SEVERED MINERALS

County	Total Surface Acres	Total Severed Mineral Acres	Percent Severed Acres
Campbell	288,640	N/A*	N/A*
Anderson	214,400	N/A*	N/A*
Roane	224,000	4,446	1.98%
Scott	348,160	23,389	6.72%
Morgan	344,960	10,401	3.01%
Fentress	318,720	83,999	26.35%
Cumberland	434,650	59,234	13.63%
White	244,480	42,855	17.53%
Van Buren	162,500	N/A*	N/A*
Bledsoe	258,500	74,235	28.71%
Sequatchie	174,720	55,146	31.56%
Marion	323,840	28,630	8.84%
Rhea	199,680	45,841	22.96%
Hamilton	352,000	34,304	9.75%
TOTAL FOR 14 COUNTIES	3,889,250	462,477	11.90%

*N/A - Counties in which separate mineral holdings are not listed in the tax records.

SOURCE: 5 Appalachian Land Ownership Study, *supra*, at 11.

TABLE III-6
AD VALOREM MINERAL TAXATION IN FOUR SOUTHERN APPALACHIAN COAL PRODUCING STATES

State	Pertinent Legislation	Implementation	Assessment Procedures Applied to Minerals	Average Tax Per Mineral Acre (For Sample Counties)
Alabama	All real property should be assessed at its fair and reasonable market value.	No assessment of minerals where held "fee simple"with land above. "Self-assessment" of severed mineral rights	Assessment rate of 10% is applied, the rate for timber, agricultural and residential land	4¢
Kentucky	Appraised at fair market value; but uniform tax set by legislature on "unmined coal" at 1/10¢ per $100 valuation.	In hands of county property valuation administrator; lack of cooperation by companies; no state program.	Most coal land assessed at "agricultural and horticultural" rate--giving up to 50% tax break.	.2¢
Tennessee	Developed and undeveloped minerals to be valued by formula established by State Board of Equalization	Formula applied in only 3 counties; state has discontinued mapping program for counties.	Coal property assessed as "agricultural" (25%) except what is underlease to mine (40%).	15¢
West Virginia	Mineral lands to be taxed at an equal rate to other land.	An extensive mapping and coal valuation program has been established by the state; partially implemented in 30 counties	Varies from county to county. Most assessors have taken 50% of values recommended by state.	$1.09

*See calculations, pp. 84-88.

SOURCE: Appalachian Land Ownership Study, 1980. Land Ownership Patterns & Their Impacts on Appalachian Counties, *supra*, at 79-80 (The Virginia statistics are also characteristic of the region.)

TABLE 1.
TOP LAND OWNERS AND TAXES PAID PER ACRE
MARTIN COUNTY, KENTUCKY

Name	Address	Total Surface Acres	Total Mineral Acres	Total Property Taxes	Total Property Taxes Per Acre
1. Pocahontas Kf	Roanoke, Va	47,869	81,333	16,902.1	0.35
2. Martiki Coal	Tulsa, Okla.	5836	283	2,059.0	0.35
3. Mt. Sterling Co.	Bluefield, W.Va.	1206	1,206	660.1	0.55
4. Fitzpartrick,	Beauty, Ky	989		134.9	0.14
5. Coff Land Co	Williamson, W.VA.	835		294.6	0.35
6. Pontiki Coal Co	Tulsa, Okla	793		287.1	0.36
7. Wiseman, TJ EST	Bluefield, W.Va.	785		63.65	0.08
8. Blankenship, MR	Columbus, Oh	765		144.45	0.18
9. Hardin, TJ Hedr	Ines, Ky	755	1,520	177.15	2.24
10. Blackburn, Mary	Cleveland, Oh	725		254.8	0.35

*Based on taxes on surface + listed minerals + improvements. Where minerals are held fee simple and not listed separately for tax purposes, the total acreage is underrepresented and thus the total tax per acre is overstated.

TABLE 2.
TOP MINERAL OWNERS*
(If not included in Table I.)

Name	Address	Total Surface Acres	Total Mineral Acres	Total Property Taxes on Minerals	Total Property Taxes Per Acre
1. Harvard Univ.	Boston, Mass.		9720 (oil & gas)	0	0
2. Hewitte, Arch	Ashland, Ky		2426	4.24	.002
3. Dempsey, MK Hrs	Ines, Ky		1890	3.49	.002
4. Jefferson Coal	Ashland, Ky		1417	2.47	.002
5. Williamson, Rus	Ines, Ky		1084	.94	.001
6. Ward, W. J. Jr.	Richardson, Ky		1061	1.96	.002

*All mineral owners above 1,000 acres, if their mineral rights are recorded on the tax rolls.

SOURCE: 3 Appalachian Land Ownership Study, *supra*, at 206.

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November 28, 1979

David Community Development Corporation
Post Office Box 51
David, KY 41616

Mr. Fred Porterfield
Housing and Urban
Development
601 S. Floyd St.
Louisville, KY
40202

Dear Mr. Porterfield,

On November 28, 1979, the staff of the David Community Development Corporation met with Hale Roberts and Gary Baldwin to discuss the possible release or waiver of mineral rights connected with a 24-unit Section 8 project called Hawk Howard Heights located in David, Kentucky.

Mr. Baldwin came on behalf of David L. Francis, owner of the mineral rights. Mr. Roberts filed the application with HUD on behalf of the David office. Since Mr. Francis is out of the country at this time, it is impossible for us to get any document signed. There has to be some time for the people in his office to determine whether or not they would recommend that a release or waiver be given to the David Community Development Corporation.

I am, at this time, asking for a 30-day extension with a possibility that another 30 days may be needed. I feel that within this time we will be able to work out any problems and this will be sufficient for Mr. Francis to prepare the proper document.

Because of the critical housing shortage in our area and because David is making a terrific come-back in housing, I sincerely hope this extension will be granted to us.

You may reach me at 606 - 886 - 8508 should you need any information concerning Hawk Howard Heights. Thank you, I remain,

Cordially,

Dorothy G. Clark
Executive Director

DGC:ss

KENTUCKY
MORTGAGE
COMPANY
INCORPORATED

P. O. BOX 13013 • LEXINGTON, KENTUCKY 40512 • (606) 276-4322

MEMO TO: Dorothy Clark
Joe Ray-Serreau
Julie May
Cecil Dunn

FROM: Nancy Thorne (Signed)

SUBJECT: Hawk Howard Heights
Hazard, Kentucky

DATE: June 25, 1980

Attached is the letter HUD sent Kentucky Housing on June 20 cancelling the units at Hawk Howard. I'm not surprised as HUD is out of Section 8 rent subsidy funds for projects that are ready to close. They are frantically pulling dollars from projects which are not moving in order to get 1980 starts.

I believe that, if we can get our site title straightened out and get some front money through grants or something, we could get units and start over. According to my notes, on April 22 Dorothy reported that Paul Evans was willing to sit and discuss mineral rights. I suggest we keep pushing at that and since quite a bit of ground work has already been done.

In fact, Kentucky Housing will be advertising soon to allocate 600 units. I would doubt that we could have our act together by that time but it may be possible. In any case, if I can be kept abreast of mineral rights progress and grant progress, I'll do what I can to find the units.

First Federal
SAVINGS AND LOAN ASSOCIATION
of CHATTANOOGA

DALLAS BAY OFFICE

DALLAS BAY OFFICE - 9539 HIXSON PIKE - HIXSON, TENNESSEE 373
615-842-0503

August 30, 1977

Mr. Raymond Weaver
Leggett Road
Sale Creek, Tennessee 37373

Dear Mr. Weaver:

Thank you for allowing us to review your deed and title policy along with the new bill passed by the State Legislature regarding coal strip mining. It appears that we would be unable to make a home loan on your property due to clause six of schedule B of your title policy. It is my understanding that the title compan, probably would not remove this clause from the title policy.

Should you be able to acquire the mineral rights to the property, we would be happy to further entertain the possibility of a home mortgage loan.

If we can be of further service to you please let us know.

Sincerely,

Dwight P. Montague

DPM/hj

Insured Savings - Home Loans

CHEROKEE VALLEY FEDERAL
Savings and Loan Association

CLEVELAND · SWEETWATER · CHATTANOOGA, TENNESSEE

Dear Mr. Raymond Weaver

We regret that Cherokee Valley Federal Savings and Loan Association could not approve your loan application. As required by Regulation B, Section 701(a) of the Federal Equal Credit Opportunity Act, we are notifying you in writing of our decision and the reasons for the decision regarding your loan application. The details of this notification are found below.

If you have any questions in regards to this information, please feel free to contact us.

Sincerely,

R. L. Holes

R. L. Holes

STATEMENT OF CREDIT DENIAL, TERMINATION, OR CHANGE

Date August 30, 1977

Applicant's Name Raymond Weaver

Applicant's Address Leggett Rd. Sale Creek, Tn. 37373

Description of Account, Transaction, or Requested Credit:

Description of Adverse Action Taken:

Principle Reason (s) for Adverse Action Concerning Credit:

Credit application incomplete	Insufficient credit references
Unable to verify credit references	Temporary or irregular employment
Unable to verify employment	Length of employment
Insufficient income	Excessive obligations
Unable to verify income	Inadequate collateral
Too short a period of residence	Temporary residence
Unable to verify residence	No credit file
Insufficient credit file	Delinquent credit obligations
Garnishment, attachment, foreclosure, repossession, or suit	Bankruptcy
XXX We do not grant credit to any applicant on the terms and conditions you request	Major structural deficiences
Loan to value excessive	Term exceeds economic life of property
Other, specify: As an association policy we do not grant loans on property where the mineral rights are owned by a third party.	

Disclosure of Use of Information Obtained From an Outside Source

Disclosure Inapplicable

Information obtained in a report from a consumer reporting agency

Name:

Street Address:

Telephone Number:

Information obtained from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, within 60 days of receipt of this notice, for disclosure of the nature of the adverse information.

Creditor's Name:

Creditor's Address:

Creditor's Telephone Number:

The Federal agency administering compliance concerning notification is:

The Federal Home Loan Bank • 2500 Dubois Tower • Cincinnati, Ohio 45202

CVS 842-8-77